In the High Court of Punjab and Haryana at Chandigarh

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C.W.P. No.3284 of 2003

**.....**

Date of decision: 13.9.2006

Professor M.M. Puri, former Vice-Chancellor, Panjab University, Chandigarh

.....Petitioner

v.

Panjab University, Chandigarh through its Registrar and another

.....Respondents

....

Coram: Hon'ble Mr. Justice S.S. Nijjar
Hon'ble Mr. Justice S.S. Saron

Present: Mr. Rajiv Atma Ram, Senior Advocate with Ms. Manjari Nehru, Advocate for the petitioner.

Mr. Anupam Gupta, Advocate for the respondents.

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**S.S. Saron, J.**

The petitioner, who is former Vice-Chancellor of the Panjab University, Chandigarh in this petition under Article 226 of the Constitution of India seeks quashing of the Senate resolution dated 22.9.2002 (Annexure-P.25/A) and consequent order No.1302/Estt. Dated 24.1.2003 (Annexure-P.25). He also seeks directions to the respondents to pay him his

retiral benefits as permissible. Besides, a restraint is sought from initiating any criminal proceedings against him on the basis of allegations levelled in impugned order No.1302/Estt. Dated 24.1.2003 (Annexure-P.25).

The petitioner has an exceptional academic record to his credit. He was appointed as Vice-Chancellor of the Panjab University, Chandigarh (`University' – for short) on 16.7.1997 (Annexure-P.1). On expiry of his term he demitted office on 22.7.2000. Thereafter a request was made to the Vice-Chancellor, Panjab University (respondent No.2) for payment of his retiral benefits which was declined vide letter dated 2.8.2000 (Annexure-P.6). It was stated therein that the post held by the petitioner was a tenure post and since his service was less than five years, the retirement benefits could not be admitted to him. Thereafter, there has been exchange of correspondence between the petitioner, the Chancellor of the University i.e. the Vice-President of India, the Vice-Chancellor, Panjab University, Chandigarh (respondent No.2) and the Registrar of the University. The petitioner, claims the release of due pensionary benefits to which he is entitled.

Written statement has been filed. It is stated that the case for payment of gratuity was put up to the audit on 20.7.2000 and an objection was raised that the post held by the petitioner was a tenure post and since his service was less than five years hence retirement benefits cannot be admitted. Therefore, the petitioner is not eligible for gratuity. As regards provident fund it is stated that the case of the petitioner for payment of provident fund was put up to the audit on 9.10.2000 which raised an objection that his case for payment of provident fund may be put up after

adjustment of advances. A sum of Rs.3,11,054/- is payable to the petitioner on account of provident fund. However, an amount of Rs.4,00,753/- is due from him on account of telephone calls and adjustment of advance of travelling allowance. Regarding leave encashment an objection was raised by the audit that being a tenure post and service of the petitioner being less than five years hence retirement benefits cannot be admitted. The case of the petitioner regarding provident fund was placed before the Syndicate for approval on 26.7.2003, which in its meeting held on 26.7.2003 (Para 21) decided the matter regarding the release of provident fund and that it be placed before the Senate. The Senate in its meeting held on 12.10.2003 resolved that the payment of the provident fund be made to the petitioner as per rules and regulations of the University. In pursuance of the Senate decision, the office processed the case of the petitioner regarding release of provident fund. Two alternatives were suggested to the petitioner regarding release of his provident fund. In terms of the first alternative the provident fund amount amounting to Rs.3,11,054/- was proposed to be adjusted against an amount of Rs.4,00,753/- which would still leave an amount of Rs.89,699/- to be recovered. In terms of the second alternative a deduction from the fund of an amount not exceeding the amount of University contribution with interest could be made from the subscriber in respect of dues under the liability to the University in terms of Provident Fund Rule 6 of the Panjab University Calendar Volume-III 2005 (page 117). By this method a sum of Rs.3,26,401/- would still remain to be recovered from the petitioner. The University also wrote to the police authorities on 9.4.2003 to register a first information report against the petitioner as per Senate

decision dated 30.3.2003 alleging misappropriation of University fund. The police authorities informed the office of Vice-Chancellor, Panjab University that no cognizable offence was found to have been committed as such the matter was filed. In short it is stated that an amount of Rs.89,699/- still remains to be recovered from the petitioner which he is liable to pay after adjusting the provident fund payable. This amount is recoverable from the petitioner in respect of the international calls made by him and also unadjusted advance. Some other audit objections and irregularities said to have been committed by the petitioner are mentioned.

The petitioner filed replication disputing the averments. It is stated that the contribution of the University upto the date the petitioner demitted office on 22.7.2000 was Rs.1,48,704/-. This was more than five years ago. Besides, the Senate has waived off an amount of Rs.34,653/- alleged to be the balance amount after adjusting Rs.74,352/- against the alleged advance of TA amounting to Rs.1,09,005/-. This amount is also stated to have been arbitrarily and wrongly calculated. The petitioner had submitted all the vouchers/bills accounting for the said amount on his return from official tour. It is, however, accepted that an amount of Rs.2,36,702/- as full and final settlement of provident fund dues was received by the petitioner on 24.10.2005 which was accepted under protest. It is stated that the question of entitlement of the respondents regarding the alleged advance TA and telephone bills is pending adjudication. The respondents cannot adjust any such amount against the dues of the petitioner. As regards gratuity it is stated that the University has not referred to any provision of the University calendar in terms of which a minimum five years service is

required for payment of gratuity.

The respondent-University has filed rejoinder to the replication. It is stated that Section 6 of the Provident Fund Act, 1925 empowers the University to make deductions from sum standing to the credit of any subscriber. Besides, reference has been made to Rule 6 of the Panjab University Calendar Volume-III, 2005 which authorizes deductions from the fund of the subscriber of an amount not exceeding the amount of the University contribution in respect of dues under liability to the University. It is stated that the respondent-University during service of the petitioner as Vice-Chancellor deposited a sum of Rs.1,48,704/- in his provident fund account. Since his service was more than one year but less than five years, he was entitled to the half amount of the University contribution in terms of Regulation 14.7 of the Panjab University Calendar Volume-I (at Page 129). In terms of the said Regulation the petitioner, it is stated, was entitled to a sum of Rs.74,352/- i.e. half of the amount of the University contribution. However, the said amount of Rs.74,352/- was adjusted against the travelling advance drawn by him. The unadjusted amount of Rs.34,653/- on account of travelling advance and a sum of Rs.2,91,748/- on account of ISD calls was written off by the Senate in its meeting held on 4.9.2005 (Annexure-R.1). It is also stated that the petitioner is not entitled for any interest as per Note-III of TA/DA Rules notified by the Punjab Government vide notification dated 8.5.1998 as adopted by the respondent-University vide circular No.12981-13980/A dated 9.10.1998. In terms of the said notification the bills were to be presented within one year from the date of journey. The petitioner, however, submitted the bills after expiry of

approximately 22 months. Since the petitioner submitted the bills after one year, the case was referred to the Chancellor for extending the time period as provided in Note-III of the said circular. The Chancellor, however, referred the case back to the Vice-Chancellor for taking decision as per University norms. The Vice-Chancellor condoned the delay vide order dated 10.8.2002 and accordingly the bills were processed for payment. After examining the bills the same were passed to the extent of Rs.1,35,379/- and thus Rs.1,09,005/- remained unadjusted for which several requests were made to the petitioner to settle the account. As such, it is stated, that the petitioner himself had not settled the advance drawn and other amounts to be recovered from him on account of ISD calls etc. It is after the decision of the Senate dated 4.9.2005 (Annexure-R.1) that an amount of Rs.34,653/- on account of travelling advance and Rs.2,91,748/- on account of ISD calls was written off and the payment of petitioner's contribution to the provident fund amounting to Rs.2,36,702/- was released to him. As regards gratuity a reference has been made to Section 4 of the Payment of Gratuity Act, 1972 which enjoins that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service of not less than five years. In terms of the proviso, the completion of continuous service of 5 years shall not be necessary where the termination of employment of an employee is due to death or disability. Therefore, it is stated that the petitioner was not entitled to any gratuity.

We have heard learned counsel for the parties.

The claim of the petitioner after making various adjustments and reconciliation is for the payment of provident fund, leave encashment

and gratuity. The petitioner was appointed as Vie-Chancellor of the Panjab University on 16.7.1997 by the Vice-President of India, who is also Chancellor of the University. He demitted office on 22.7.2000 on completion of his tenure. Admittedly, the petitioner has a service of less than five years as Vice-Chancellor of the University. During the service of the petitioner as Vice-Chancellor the respondent-University deposited a sum of Rs.1,48,704/- in his provident fund account. His service was more than one year but less than five years. Therefore, in terms of Regulation 14.7 (at page-129) of the Panjab University Calendar, Volume-I, he was entitled to half the amount of University contribution to the provident fund. Regulation 14.7 reads as under:-

> "14.7. A sum equal to the amount subscribed by the employees on the basis of 10% of their salary during the month shall be contributed at the end of each month to the Provident Fund by the University and such portion of the amount so contributed shall be credited to the amount of the depositor.
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> Provided that in the case of person appointed on probation, the University contribution shall be credited to his account, on confirmation, from the date of his appointment.
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> Provided further that-
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> (i) the benefit of University contribution to the fund of an employee shall be as under:
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> (a) Nil, if the period of service put in by an employee is one year or less;
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> (b) Half the amount of University contribution will be paid if

the period of service put in is more than one year but less than five years; and

(c) Full amount of University contribution will be paid if the period of service put in is more than five years or at the time of superannuating irrespective of the period of service.

Provision of clause (i) shall not apply to persons who joined the University service before 17.3.1962."

In terms of the above Regulations, the petitioner was entitled to Rs.74,352/- i.e. half the amount of the University contribution of Rs.1,48,704/-. However, the said amount of Rs.74,352/- has been adjusted against travelling advance drawn by him. The unadjusted amount of Rs.34,653/- on account of travelling advance and a sum of Rs.2,91,748/- on account of ISD calls were written off by the Senate in its meeting dated 4.9.2005 (Annexure-R.1). The travelling bills of the petitioner after delay was condoned by the Vice-Chancellor vide order dated 10.8.2002 were processed for payment. After examining the bills the same were passed to the extent of Rs.1,35,379/- and thus Rs.1,09,005/- remained unadjusted. It is only after the decision of the Senate on 4.9.2005 (Annexure-R.1) that the amount of Rs.34,653/- on account of travelling advance and Rs.2,91,748/- on account of ISD calls were written off. Consequently the payment amounting to Rs.2,36,702/- being the petitioner's contribution to the provident fund was released to him vide cheque dated 21.10.2005. The amount of provident fund was released with one year's interest upto 31.7.2001. The interest on provident fund for the period from 1.8.2001 to 30.9.2005 i.e. before October 2005 till the payment was made works out to

Rs.1,42,384/-. The said amount of Rs.1,42,384/- is payable as interest on the provident fund. This interest has been calculated by the University on provident fund on compound interest which varies from time to time i.e. 12%, 7.7.5% and 9.5%.

As regards leave encashment we are of the view that the petitioner would be entitled to the same in terms of Rule 17.3 (Part-III) of the Panjab University Calendar Volume-III, 2005 under the chapter `Leave Rules for University Employees'. Rule 17.3 reads as under:-

> "**17.3.** An employee on retirement (or on retirement voluntarily) shall be paid cash equivalent to such number of days of earned leave as may be decided by the Punjab Govt. for its own employees, from time to time. The cash equivalent to leave salary (excluding City Compensatory Allowance and House Rent Allowance) thus admissible will be paid in lump-sum as a one time settlement for which the authority competent to sanction leave shall issue suo motu an order granting cash equivalent to leave salary on a pay drawn on the date of retirement.
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> Provided that if an employee proceeds on leave preparatory to retirement under Rule 17.2, the benefit of payment of cash equivalent to leave salary under Rule 17.3 shall be admissible after deducting the period spent on leave preparatory to retirement.
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> Provided further that an employee, who has voluntarily retired or has retired on invalidism, shall be entitled to the

aforesaid benefit of cash payment for the unutilised leave due, notwithstanding that as a result of it the period between date of his retirement as aforesaid and the date on which he would have retired in the normal course on superannuation exceeds the date of retirement on superannuation."

In terms of the above the petitioner would be entitled to encashment of the unutilised leave which to his credit is 77 days. His basic pay is Rs.25,000/-. Besides, EDA amounting to Rs.9,500/- which makes total pay as Rs.34,500/-. The amount of leave encashment, therefore, that works out to be paid to the petitioner is Rs.34,500/- x 77 Days/30 days = Rs.88,550/-. Interest on the above amount of Rs.88,500/- has been calculated by the University @ 9% per annum for the period from 21.7.2000 to 20.9.2006 i.e. for 74 months and has been worked out to Rs.49,145/-. In this manner, the total amount that is payable by the respondent-University to the petitioner works out to Rs.2,80,079/- i.e. Rs.1,42,384/- as PF, Rs.88,550/- as leave encashment and Rs.49,145/- as interest on leave encashment for 74 months @ 9% per annum.

Insofar as gratuity is concerned the petitioner would not be entitled to any gratuity in view of the provisions of Section 4 of the Payment of Gratuity Act, 1972 which reads as follows:-

"**4. Payment of Gratuity –** (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease;

Provided that the completion of continuous service of five years shall not be necessary where the termination of employment of any employee is due to death or disablement:

Provided xx xx xx xx

(2) to (6) xx xx xx xx"

A perusal of the above shows that gratuity is payable to an employee on the termination of his employment after he has rendered continuous service for less than five years. The petitioner admittedly has rendered less than five years service as Vice-Chancellor. The condition of five years service is not required where the termination of employment of an employee is due to death or disablement which is not the case in hand. In the circumstances, the petitioner is not entitled to any gratuity.

The dispute that remains for consideration is with regard to a sum of Rs.68,673/- which the University claims is payable as interest on Rs.1,09,005/- i.e. the unadjusted travelling bills amount from the due date of September 1998 to September 2005 when the Senate took a decision to write off the said amount. Mr. Rajiv Atma Ram, learned senior counsel for the petitioner though submitted that once the amount of Rs.1,09,005/- had been written off by the Senate in terms of its decision taken on 4.9.2005, there was no question of charging any interest on the said amount. However, with a view to put a quietus to the matter he has very fairly agreed to give up the said amount.

In view of the above discussion, it comes out that a sum of Rs.2,80,079/- is payable by the respondent-University as encashment of

unutilized leave to the petitioner from which a sum of Rs.68,673/- is to be deducted as interest on the sum of Rs.1,09,005/- from the date it was due i.e. September 1998 to the date it was written off by the Senate in September 2005. Accordingly, the respondent-University shall pay to the petitioner a sum of Rs.2,11,406/- i.e. Rs.2,80,079/- minus Rs.68,673/- which shall be paid by the University to the petitioner within two weeks from the date of receipt of the certified copy of this order.

In terms of the above the writ petition is accordingly disposed of with a direction to the University to release to the petitioner a sum of Rs.2,11,406/- within a period of two weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

**(S.S. Nijjar)**
**Judge**

September 13, 2006.

**(S.S. Saron)**
**Judge**

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